COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY MCI FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 96-431

In the Matter of:

THE INTERCONNECTION AGREEMENT NEGOTIATIONS BETWEEN AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO 47 U.S.C.	)	CASE NO. 96-482

O R D E R

On July 14, 1997, the Commission issued its Order denying motions of MCI Telecommunications Corporation ("MCI"), AT&T Communications of the South Central States, Inc. ("AT&T"), and American Communications Services, Inc. ("ACSI"), to open an additional docket to review the cost studies filed by BellSouth Telecommunications, Inc. ("BellSouth") for unbundled network elements and non-recurring charges. On August 4, 1997, MCI filed a Motion for Rehearing and Reconsideration of the Commission's July 14, 1997 Order ("MCI Motion"), claiming the Commission's denial deprived it of its constitutional right to due process. On August 6, 1997, AT&T filed a petition for rehearing ("AT&T Motion"), also claiming that its due process rights had been denied. On August 6, 1997, American Communications Systems, Inc. ("ACSI") filed a

similar motion. On August 15, 1997, BellSouth Telecommunications, Inc. ("BellSouth") filed its response asserting that due process rights had been given to MCI and AT&T.

In evaluating a due process claim, it is first necessary to determine what, if any, interest is involved, and what its parameters are under the law that conferred the interest. Board of Regents v. Roth, 408 U.S. 64, 577 (1972) ("Property interests, of course, are not created by the Constitution. Rather, they are created *and their dimensions are defined by* existing rules or understandings that stem from an independent source such as state law. . .") (emphasis added). Although MCI and AT&T do not explicitly so state, the property interest they claim is created by the Telecommunications Act of 1996, Pub.L. 104-104, 110 Stat. 56 (the "Act"), which provides that a state commission shall, in setting "just and reasonable rate[s] for the interconnection of facilities . . . and . . . for network elements" base the price on "cost" plus a "reasonable profit." 47 U.S.C. Section 252(d). The statute also provides that a state commission is to resolve "each issue" in a petition for arbitration of an interconnection agreement "not later than 9 months after the date on which the local exchange carrier received the request under this section." 47 U.S.C. 252(b)(4)(C). BellSouth received the interconnection requests from MCI and AT&T that instigated these arbitration proceedings on March 26, 1996 and May 6, 1996 respectively, over 15 months ago.

MCI's and AT&T's demand for an additional proceeding to consider interconnection rates is, accordingly, a demand for process far in excess of what is due under the statute that defines their "rights." This Commission has continued these

proceedings months beyond the statutory nine months provided to the parties by statute. It has done so in order to ensure that the parties had ample opportunity to present arguments and to be heard. Eventually, however, there must be finality to any Commission decision.

MCI and AT&T claim they were deprived of a meaningful opportunity to be heard in regard to the reasonableness of various total element long run incremental cost ("TELRIC") studies submitted by BellSouth, particularly those that were filed after the interconnection hearings were held in these dockets.[1] However, neither MCI nor AT&T demanded these studies through the discovery process prior to the hearing. Nor did they challenge BellSouth costs they now deem "vastly inflated."[2] In setting interconnection rates in this proceeding, the Commission proceeded on the basis of the information available to it, requesting additional BellSouth cost studies by Orders dated December 20, 1996 and February 14, 1997. BellSouth submitted additional studies as requested by the Commission on March 31, 1997 and June 30, 1997. When MCI requested a separate docket and a hearing on the additional TELRIC studies, the Commission granted the hearing request but refused to institute a separate docket, explaining that interconnection rate issues were part and parcel of the arbitration proceeding under the Act. The hearing request was granted on May 19, 1997, well over a year after BellSouth's receipt of MCI's interconnection request, and the Commission set a hearing date of June 10, 1997, *six months* after the parties' time to present

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1 MCI Motion at 5; AT&T Motion at 6.

2 MCI Motion at 2.

arguments had expired under the statute. The Commission invited AT&T to participate. The cost studies in question had been filed in March 1997, over two months before the scheduled hearing. Instead of discussing the cost studies at the informal conference held prior to the hearing date, however, MCI and AT&T asked for yet more time and a separate docket to consider BellSouth costs, despite the Commission's consistent refusal to treat arbitration issues outside arbitration dockets.

In brief, the arbitration proceedings that were to have concluded in December 1996 and February 1997 have continued far beyond the statutorily-mandated deadline, as issues and arguments have been introduced piecemeal. It is disingenuous to claim, as MCI and AT&T now do, that they have had no opportunity to be heard regarding the evidence underlying the prices BellSouth will charge for interconnection. The pricing issue was, or should have been, one of the major issues both prior to, and during, the hearings. The failure of MCI and AT&T to demand all appropriate cost studies at the appropriate time, or to probe the assumptions underlying those studies during the hearing provided for that purpose, does not constitute a failure of this Commission to provide them with an opportunity to do so.

The rates specified by the Commission are cost-based, based on evidence presented by the parties throughout these proceedings. Further, the rates are temporary in the sense that the contract itself is of finite duration. Renegotiation may take place at any time. The Commission will not arbitrate prices during the term of the agreements absent a material change in circumstances. MCI and AT&T have now completed these

agreements with BellSouth on the terms ordered and the Commission urges them to begin service in the local exchange market in Kentucky.

As correctly noted by BellSouth, ACSI has resolved all matters for which it requested interconnection with BellSouth.[3] ACSI, therefore, has no right to intervene in the arbitration proceedings of other entities.

For the foregoing reasons, IT IS HEREBY ORDERED that the motions of MCI, AT&T and ACSI for rehearing of the Commission's July 14, 1997 Order in this docket are denied.

Done at Frankfort, Kentucky, this 25th day of August, 1997.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director

[3] BellSouth Response at 12.